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HOUSE BILL 499

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

P. David Vickers

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR BACKGROUND CHECKS ON ALL APPLICANTS FOR EMPLOYMENT; REQUIRING LOCAL SCHOOL BOARDS TO DISCLOSE CERTAIN PERSONNEL INFORMATION UPON INQUIRY OF ANOTHER LOCAL SCHOOL BOARD; PROVIDING IMMUNITY FROM LIABILITY FOR DISCLOSING CERTAIN INFORMATION; PROVIDING INDEMNIFICATION FOR FAILURE TO DISCLOSE IN CERTAIN INSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-10-3.3 NMSA 1978 (being Laws 1997, Chapter 238, Section 1, as amended) is amended to read:

"22-10-3.3. BACKGROUND CHECKS. --

A. An applicant for initial certification shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department of education to obtain the applicant's federal bureau of

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1 investigation record. Convictions of felonies or misdemeanors
2 contained in the federal bureau of investigation record shall
3 be used in accordance with the Criminal Offender Employment
4 Act. Other information contained in the federal bureau of
5 investigation record, if supported by independent evidence,
6 may form the basis for the denial, suspension or revocation of
7 a certificate for good and just cause. Records and any
8 related information shall be privileged and shall not be
9 disclosed to a person not directly involved in the
10 certification or employment decisions affecting the specific
11 applicant. The applicant for initial certification shall pay
12 for the cost of obtaining the federal bureau of investigation
13 record.

14 B. Local school boards shall develop policies and
15 procedures to require background checks on an applicant who
16 has been offered employment, a contractor or a contractor's
17 employee [~~with unsupervised access to students~~]. An applicant
18 for employment who has been initially certified within twelve
19 months of applying for employment with a local school board
20 shall not be required to submit to another background check if
21 the department of education has copies of his federal bureau
22 of investigation records on file. An applicant who has been
23 offered employment, a contractor or a contractor's employee
24 [~~with unsupervised access to students~~] shall provide two
25 fingerprint cards or the equivalent electronic fingerprints to

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1 the local school board to obtain his federal bureau of
2 investigation record. The applicant who has been offered
3 employment, contractor or contractor's employee may be
4 required to pay for the cost of obtaining a background check.
5 At the request of a local school board, the department of
6 education is authorized to release copies of federal bureau of
7 investigation records that are on file with the department of
8 education and that are not more than twelve months old.
9 Convictions of felonies or misdemeanors contained in the
10 federal bureau of investigation record shall be used in
11 accordance with the Criminal Offender Employment Act; provided
12 that other information contained in the federal bureau of
13 investigation record, if supported by independent evidence,
14 may form the basis for the employment decisions for good and
15 just cause. Records and any related information shall be
16 privileged and shall not be disclosed to a person not directly
17 involved in the employment decision affecting the specific
18 applicant who has been offered employment, contractor or
19 contractor's employee with unsupervised access to students.

20 C. Upon inquiry of a local school board concerning
21 information relating to an applicant for employment, a local
22 school board that previously employed the applicant shall
23 release to the inquiring school board copies of all
24 information in the applicant's personnel file concerning
25 conduct that may affect the health or safety of students. The

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1 information released may be just cause for the employment
2 decision made by the inquiring school board; provided that the
3 information shall be privileged and shall not be disclosed to
4 a person not directly involved in the employment decision. No
5 local school board or its employee shall be held liable to the
6 applicant for employment for any civil damages as a result of
7 releasing information pursuant to this subsection.

8 D. A local school board found liable for damages
9 to a student caused by the actions of an employee shall be
10 indemnified and held harmless by a local school board that
11 previously employed the employee if:

12 (1) before hiring the employee, the employer
13 had made an inquiry of the previous employer concerning the
14 employee;

15 (2) the previous employer failed to release
16 information required to be released pursuant to Subsection C
17 of this section; and

18 (3) there was information in the employee's
19 personnel file with the previous employer concerning prior
20 conduct or actions that directly related to the actions of the
21 employee for which the employer was found liable.

22 ~~[E.]~~ E. The department of education shall
23 implement the provisions of Subsection A of this section on or
24 before July 1, 1998. "